

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

July 11, 2012

No. 11-70004

Lyle W. Cayce
Clerk

CARLOS MANUEL AYESTAS, also known as Dennis Zelaya Corea,

Petitioner-Appellant

v.

RICK THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:09-CV-2999

Before DAVIS, SMITH, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

IT IS ORDERED that the petition for rehearing is DENIED.

Petitioner has also moved that this court vacate its prior opinion and remand to the district court for consideration of his previously made claim of ineffective assistance of state habeas counsel in light of the Supreme Court's decision in *Martinez v. Ryan*, 132 S. Ct. 1309 (2012). This court recently addressed Martinez's applicability in Texas. See *Ibarra v. Thaler*, No. 11-70031,

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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2012 WL 2620520, at *4 (5th Cir. June 28, 2012). We held that, because Texas does not mandate ineffective assistance claims to be brought first in habeas proceedings, Martinez does not apply in Texas. *Id.* Accordingly, we DENY the motion.